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of Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' PROPOSED  
MODIFICATIONS TO DEBTORS' PLAN  
AND CONFIRMATION ORDER**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric  
Company  
☒ Affects both Debtors

*\* All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Date: June 8, 2020  
Time: 9:30 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

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The Official Committee of Unsecured Creditors appointed in these above-captioned cases  
(the "Creditors' Committee") submits its proposed modifications to the *Debtors' and Shareholder*

1 *Proponents' Draft Joint Chapter 11 Plan of Reorganization Dated June 7, 2020* [Docket No. 7814-  
2 1] ("Plan"), the *Debtors' Notice of Filing of Plan Supplement* [Docket No. 7037] ("Plan  
3 Supplement"), and proposed confirmation order (the "Confirmation Order"). The Creditors'  
4 Committee submits these modifications should be included within any confirmed Plan and  
5 associated Confirmation Order:

6  
7 **Issue #1: The Debtors' proposed all-encompassing and automatic disallowance and**  
8 **discharge of all prepetition claims for indemnification or contribution arising under assumed**  
9 **executory contracts and unexpired leases.** *See* Plan Supplement ¶ 13.<sup>1</sup>

10 **Proposed fixes:**

- 11 • "Notwithstanding anything in the Plan, the Plan Supplement, or Confirmation  
12 Order to the contrary, with respect to any executory contract or unexpired lease  
13 that is assumed under the Plan, any obligations for contribution or indemnity  
14 arising under such executory contract or unexpired lease shall be assumed in their  
15 entirety and continue to be obligations of the applicable Reorganized Debtor or  
16 Reorganized Debtors."<sup>2</sup>
- 17 • Delete Plan Supplement ¶ 13

18 **Issue # 2: The Debtors' proposed all-encompassing and automatic disallowance and**  
19 **discharge of all prepetition claims for indemnification or contribution that do not arise under**  
20 **an executory contract or unexpired lease that is assumed under the Plan.** *See* Debtors' Reply  
21 [Docket No. 7528] at 52-53 ("Even if a claimant has filed a proof of claim asserting a contingent  
22 claim for indemnification or contribution, Bankruptcy Code section 502(e)(1)(B) specifically

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23 <sup>1</sup> In considering this issue, the Creditors' Committee refers the Court to the *In re G-I Holdings,*  
24 *Inc.*, 580 B.R. 388 (Bankr. D.N.J 2018) and companion *Ashland Inc. v. G-I Holdings Inc.*, No.L-  
25 233-15 (N.J. Super. Ct. App. May 30, 2018) decisions cited on page 3 n.5 of the Creditors'  
26 Committee's Supplemental Objection [Document No. 7716].

27 <sup>2</sup> *See, e.g.*, June 4 Confirmation Hr'g Tr. at 145: 9-11 (Mr. Karotkin: "Yes. With respect to  
28 executory contracts that are going to be assumed, contribution and indemnity claims will be  
assumed in their entirety."); *id.* at 146:13-19 (THE COURT: "So to go back, you're saying if . . .  
the debtor is moving to assume a contract, it is assuming the contribution and indemnity aspects  
with it and if there -- MR. KAROTKIN: Yes.").

disallows any such claim . . .”).

**Proposed fix:**

“Notwithstanding anything in the Plan, the Plan Supplement, or Confirmation Order to the contrary, all rights and defenses of any Entity with respect to any Claim for contribution or indemnity that does not arise under an executory contract or unexpired lease that is assumed under the Plan are preserved, including, without limitation, (i) any objections to such a Claim under section 502 of the Bankruptcy Code, (ii) any rights and defenses to allowance or disallowance of such a Claim under section 502(e)(2) of the Bankruptcy Code, and (iii) whether or not such Claim has been discharged under section 1141 of the Bankruptcy Code.”<sup>3</sup>

**Issue # 3: Clarity regarding retained rights and defenses of any Entity with respect to any Assigned Right and Cause of Action asserted by the Fire Victim Trust against such Entity.** *See, e.g.*, Debtors’ Reply at 56.

**Proposed fix:**

“Notwithstanding anything in the Plan, the Plan Supplement, or Confirmation Order to the contrary, all rights and defenses of any Entity with respect to any Assigned Right and Cause of Action asserted by the Fire Victim Trust against such Entity are retained and preserved as if no such assignment had occurred.”<sup>4</sup>

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<sup>3</sup> *See, e.g., id.* at 145: 13-23 (Mr. Karotkin: “With respect to what I call any noncontractual claims for contribution and indemnity, they won’t just be addressed in the ordinary course in the claims reconciliation or resolution process. To the extent anyone asserts a claim, all rights of the parties are reserved to address the validity or allowance of any claim, including all rights under the plan under Section 1141, that those claims are discharged under Section 502, that they’re not allowable and any (indiscernible) with respect to that would be -- if it ever arises would be left for another day with all rights of parties preserved.”).

<sup>4</sup> *See, e.g., id.* at 147: 14-25 (Mr. Karotkin: “all rights and defenses of vendors are retained with respect to the vendors that are pursued or may be pursued by the Fire Victim Trust. So those vendors, to the extent they were pursued by the Fire Victim Trust on claims that we assigned to the trust, would have the right to assert all rights and defenses that they would have the right to assert against us if we had pursued them. And I think that’s consistent with everyone’s understanding. We could not strip them of their rights and defenses in any event. THE COURT: You can’t strip them of their defenses and then assign their obligations, huh? How fair.”).

1                   **Issue # 4: Clarity regarding retained rights of setoff and recoupment.** *See, e.g.,* Plan  
2 at Section 5.13 (preserving only Debtors’ setoff and recoupment rights); *see also* Debtors’ Reply  
3 at 50.

4                   **Proposed fix:**

5                   “Notwithstanding anything in the Plan, the Plan Supplement, or Confirmation  
6 Order to the contrary, any rights of setoff or recoupment or defenses thereto held  
7 by any Entity are expressly retained and preserved, subject to any applicable  
8 limitations of the Bankruptcy Code.”<sup>5</sup>

9                   **Issue # 5: Assurance that any Allowed claim of indemnification or contribution in**  
10 **connection with foregoing issues is not channeled to the Fire Victim Trust.** *See* Plan at Section  
11 1.78 (defining “Fire Claim” as “any Claim against the Debtors in any way arising out of the  
12 Fires...”).

13                   **Proposed fix:**

14                   “Notwithstanding anything in the Plan, the Plan Supplement, or Confirmation Order to  
15 the contrary, any Allowed claim of indemnification or contribution that any Person has  
16 against the Debtors or Reorganized Debtors, whether arising out of contract or otherwise,  
17 shall not be a Fire Claim.”

18                   **Issue #6: Proofs of claims not disallowed through the Plan.**

19                   **Proposed fix:**

20                   “Notwithstanding anything to the contrary in the Plan, Plan Supplement, or Confirmation  
21 Order, entry of an Order confirming the Plan shall not operate to Allow or Disallow any  
22 filed proofs of Claim and instead all such proofs of Claim shall be adjudicated pursuant  
23 to the claims resolution process set forth in the Plan.”<sup>6</sup>

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26 <sup>5</sup> *See, e.g., id.* at 147: 8-10 (MR. KAROTKIN: “A couple of other items. We would clarify in the  
27 plan that the rights of all parties, with respect to set off and recoupment, are preserved.”).

28 <sup>6</sup> The Creditors’ Committee observes that the Debtors use the prefatory clause “Notwithstanding  
anything to the contrary in the Plan...” (or iterations thereof) throughout the Plan. *See, e.g.,* Plan  
at sections 5.12, 8.5(c), 10.9(c), 10.9(g), and 10.11(d).

1 Dated: June 8, 2020

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3 **MILBANK LLP**

4 /s/ Gregory A. Bray

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